

104TH CONGRESS  
2D SESSION

# H. R. 3538

To amend title 38, United States Code, to clarify the conditions under which an action may be brought against a State to enforce veterans' reemployment rights, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 29, 1996

Mr. FILNER introduced the following bill; which was referred to the  
Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to clarify the conditions under which an action may be brought against a State to enforce veterans' reemployment rights, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Veterans' Job Protec-  
5 tion Act".

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1 **SEC. 2. CLARIFICATION OF ACTIONS AGAINST STATES TO**  
2 **ENFORCE VETERANS' REEMPLOYMENT**  
3 **RIGHTS.**

4 (a) ACTION AGAINST A STATE.—Section 4323 of title  
5 38, United States Code, is amended—

6 (1) in subsection (a)(1), by striking out “of an  
7 unsuccessful effort to resolve a complaint relating to  
8 a State (as an employer) or” and inserting in lieu  
9 thereof “relating to”;

10 (2) in subsection (a)(2)—

11 (A) by inserting “against a private em-  
12 ployer” after “commence an action” in the mat-  
13 ter preceding subparagraph (A); and

14 (B) in subparagraph (A), by striking out  
15 “regarding the complaint under section  
16 4322(c)” and inserting in lieu thereof “under  
17 section 4322(a)”;

18 (3) in clauses (ii) and (iii) of subsection  
19 (c)(1)(A), by inserting “or the United States, as ap-  
20 propriate,” after “person” both places it appears;

21 (4) by redesignating the second sentence of sub-  
22 section (b) as paragraph (3) of subsection (a); and

23 (5) by amending subsection (b), as so amended,  
24 to read as follows:

25 “(b)(1) A person who receives from the Secretary a  
26 notification pursuant to section 4322(e) relating to a State

1 (as an employer) may request that the Secretary refer the  
2 complaint to the Attorney General. If the Attorney Gen-  
3 eral is reasonably satisfied that the person on whose behalf  
4 the complaint is referred is entitled to the rights or bene-  
5 fits sought, the Attorney General may commence an action  
6 for appropriate relief in an appropriate United States dis-  
7 trict court. The action shall be brought in the name of  
8 the United States. In the case that such relief includes  
9 an award of compensation under subsection (c)(1), such  
10 compensation shall be held in a special deposit account  
11 and shall be paid, on order of the Attorney General, di-  
12 rectly to the person. Any such moneys not paid to a person  
13 because of inability to do so within a period of three years  
14 shall be covered into the Treasury of the United States  
15 as miscellaneous receipts.

16 “(2) A person may commence an action against a  
17 State as an employer for relief with respect to a complaint  
18 if that person—

19 “(A) has chosen not to apply to the Secretary  
20 for assistance under section 4322(a);

21 “(B) has chosen not to request that the Sec-  
22 retary refer the complaint to the Attorney General  
23 under paragraph (1); or

1           “(C) has been refused representation by the At-  
2           torney General with respect to the complaint under  
3           such paragraph.

4           “(3)(A) In the case of an action commenced against  
5           a State as an employer under paragraph (2), the action  
6           shall be brought in the name of the United States.

7           “(B) A copy of the complaint and written disclosure  
8           of substantially all material evidence and information the  
9           person possesses shall be served on the United States pur-  
10          suant to Rule 4(d)(4) of the Federal Rules of Civil Proce-  
11          dure.

12          “(C)(i) The person bringing the action shall have the  
13          right to conduct the action. If the United States so re-  
14          quests, it shall be served with copies of all pleadings filed  
15          in the action and shall be supplied with copies of all depo-  
16          sition transcripts (at the expense of the United States).  
17          When a person proceeds with the action, the court, with-  
18          out limiting the status and rights of the person initiating  
19          the action, may nevertheless permit the United States to  
20          intervene at a later date upon a showing of good cause.

21          “(ii) If the United States intervenes and thereafter  
22          proceeds with the action, it shall have the primary respon-  
23          sibility for prosecuting the action, and shall not be bound  
24          by an act of the person bringing the action. Such person  
25          shall have the right to continue as a party to the action.

1       “(iii) The United States may settle the action with  
2 the defendant notwithstanding the objections of the person  
3 initiating the action if the court determines, after a hear-  
4 ing, that the proposed settlement is fair, adequate, and  
5 reasonable under all the circumstances.

6       “(D) After intervention by the United States, upon  
7 a showing by the defendant that unrestricted participation  
8 during the course of the litigation by the person initiating  
9 the action would be for purposes of harassment or would  
10 cause the defendant undue burden or unnecessary ex-  
11 pense, the court may limit the participation by the person  
12 in the litigation.

13       “(4) If the United States does not intervene under  
14 paragraph (3) and the person bringing the action prevails  
15 or settles the claim, the person shall receive appropriate  
16 relief, including an amount for compensation or liquidated  
17 damages under subsection (c)(1). The amount shall be  
18 paid out of the proceeds of the action or settlement. The  
19 person prevailing in the action or settling the claim shall  
20 also receive an amount for reasonable expenses which the  
21 court finds to have been necessarily incurred, plus reason-  
22 able attorneys’ fees and costs. All such expenses, fees, and  
23 costs shall be awarded against the defendant.

24       “(5) In the case of an action brought under this sub-  
25 section, the appropriate district court is the court for any

1 district in which the State exercises any authority or car-  
2 ries out any function.

3 “(6) The United States is not liable for expenses  
4 which a person incurs in bringing an action under this  
5 subsection.”.

6 (b) EFFECTIVE DATE.—The amendments made by  
7 subsection (a) shall apply to all actions commenced under  
8 chapter 43 of title 38, United States Code, that are not  
9 final on the date of the enactment of this Act. In the case  
10 of any such action, the court shall, upon motion of a party,  
11 substitute parties to the action so that such action may  
12 proceed in accordance with section 4323 of such title, as  
13 amended by subsection (a) of this section.

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